

## REMARKS

Reconsideration of the present application is respectfully requested.

### Summary of Office Action

Claims 10, 14 and 31-36 stand rejected under 35 U.S.C. § 103(a) based on Duggan et al. 6,571,257 ("Duggan") in view of Bone et al. 2008,0091739 ("Bone").

### Summary of Amendments

In this response, no claims have been canceled; claims 10, 32-34 and 36 have been amended; and claims 37-53 are newly added. No new matter has been added.

Therefore, claims 10, 14 and 31-53 are now pending.

Support for the newly added claims can be found at the following locations in the present application:

<u>Claims</u>	<u>Support<sup>1</sup></u>
37	[0029]
38	[0024], [0041], Fig. 6
39	[0041], Fig. 6
40	[0038], [0040], Fig. 5
41	Fig. 1, [0020]
42	See support for above-listed claims; also, Fig. 4 and [0031] – [0034]
43-53	See support for above-listed claims.

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<sup>1</sup> Not an exhaustive listing of support.

### Discussion of Rejections

Claims 10, 14 and 31-36 stand rejected under 35 U.S.C. § 103(a) based on Duggan in view of Bone. Applicants respectfully traverse. The amendments to certain claims are made only to place those claims in a form which Applicants prefer. The amendments are *not* made in response to the rejections or to comply with any statutory requirement of patentability, since no such amendments are believed to be necessary.

Although Applicants arguments are directed to the alleged *combination* of references, it is necessary to consider their individual disclosures, in order to ascertain what combination, if any, could be made from them.

### Claims 10 and 34

1. Duggan fails to disclose an agent that scans a file and directory structure of a storage server and collects information about a file stored on a storage server, as the Office alleges.

The Office cites the data collection agent 115 in Duggan as the "agent" of Applicant's claims. However, the data collection agent 115 in Duggan collects information about the file system of *its managed host 105*, *not* a storage server as in claims 10 and 34. A managed host 105 in Duggan is not a storage server insofar as Duggan discloses. The data collection agent 115 then provides the collected information to the storage management server 145. There is no disclosure or suggestion in Duggan that a managed host 105 has any ability to serve or communicate

with a corresponding storage "client". It is also noteworthy that Duggan explicitly uses the term "server" where a server is intended to be described (e.g., "storage management server 145"), yet that term is *not* used at all in relation to the managed hosts 105. Therefore, it is clear that managed hosts 105 in Duggan are not storage *servers*. Thus, Duggan fails to disclose an agent to scan a file and directory structure of *a storage server* and to collect information about a file stored *on the storage server*, as alleged.

Likewise, Bone also does not disclose or suggest this limitation. For at least this reason, therefore, the rejection is improper and should be withdrawn.

2. Duggan fails to disclose a summary of a directory in which the file is located, as alleged.

The Office's response to Applicant's argument fails to rebut Applicant's argument that Duggan fails to disclose a summary of a directory in which the file is located. The Office's response is as follows (Office Action, p. 7, emphasis added):

7. Applicant's arguments filed in regards to the Duggan reference on pages 6 and 7 of the Remarks have been fully considered but they are not persuasive. The Applicant states " Duggan does not disclose... particularly a summary of the directory in which the file is located.

8. The Examiner respectfully disagrees. Column 4, lines 12-21 of Duggan states that the management application stores the initialization data in a repository. The application collects this information from all hosts, aggregates and presents the data to system manager. According

to column 3, lines 40-45 of Duggan, the data collected during initialization phase include *files [sic] storage attributes* collected in order to create a snapshot of the storage layout. Therefore, a summary of the directory is considered to be *analogous to* a summary of a file system. According to the Applicant's specification, the summary is merely a table of file and directory attributes. Furthermore, neither the specification nor the claim limitation explicitly limits the type of information stored in the directory.

First, as to the "file storage attributes" to which the Office refers, Duggan is completely silent regarding what attributes these might be. Insofar as Duggan discloses, those attributes do not necessarily provide any information about the directories in which the files reside.

Second, the Office's rationale for finding Applicant's arguments unpersuasive rests upon the conclusion, "Therefore, a summary of the directory is considered to be *analogous to* a summary of a file system." Office Action, p. 7 (emphasis added). But since the rejection relies upon the assertion that Duggan *discloses* a summary of a directory (Office Action, p. 3), the Office cannot justifiably dismiss Applicant's argument that Duggan does not do so, by merely countering that Duggan discloses something *analogous to* that limitation. To sustain the rejection the Office must show that Duggan in fact *discloses* a summary of a directory in which the scanned file is located. Thus, the rejection is improper for this additional reason.

Applicants therefore maintain that Duggan does not disclose or suggest a summary of a directory in which the file is located (Office action, page 3). Duggan

discloses storing "initialization phase data" in a "composite SRM data repository 150" (figure 1; column 4, lines 12-17). Assuming *arguendo* Duggan inherently discloses a file system that includes one or more *directories*, and assuming *arguendo* "initialization phase data" includes information about a file in the file system, such disclosure still does *not* amount to, or inherently include or suggest, forming a *summary of a directory* in which the file is located. There are many different attributes and characteristics of files or a file system that can potentially be compiled and stored in a database, such as composite SRM data repository 150 in Duggan, *other than* information about *directories*. As such, the information being compiled in Duggan does not necessarily include any information about directories in the file system, much less a summary of a directory.

Note that "[i]nherency . . . may not be established by mere probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient." Continental Can Co. v. Monsanto Co., 948 F.2d 1264, 1269 (Fed. Cir. 1991)(quoting *In re Oelrich*, 666 F.2d 578, 581, 212 U.S.P.Q. 323, 326 (C.C.P.A. 1981) (emphasis added). In this regard to this limitation, therefore, the Office has read too much into Duggan.

Likewise, the other cited references also are not seen to disclose the limitation in question. For at least this reason, the cited combination of references does not disclose all the limitations of Applicants' independent claims and, therefore, cannot render those claims obvious.

3. Bone also does not disclose everything the Office Action alleges.

The Office acknowledges that Duggan fails to disclose that the agent is separate from the MMA, or that the agent uses a file system different from any file system that the storage server uses (Office Action, page 4). However, the Office cites Bone at paragraph [0085] as disclosing an "agent" (or multiple agents) and cites Bone at paragraphs [0110] and [0120] as disclosing that the agent uses a file system different from a file system that the storage server uses.

The Office states, "It would have been obvious . . . to have modified the data collection agent of Duggan to be remote as is disclosed by Bone " (Office Action, p. 4). However, that conclusion is misplaced, because Bone does not in fact disclose any data collection agent that is remote from a storage server or from an MMA. The collection "agents" mentioned in paragraph [0085] of Bone are software modules *inside* a server 104a (see Fig. 7); however, the cited intermediate device 815 mentioned in paragraphs [0110] and [0120] and Fig. 9 (which is also alleged to be an "agent"), which is an external device coupled between clients and servers, has nothing to do with those collection agents mentioned in paragraph [0085]; it has a completely different purpose. The Office cannot rely on these separate paragraphs in Bone as if they all describe the same "agent"; they do not. Because the Office's rationale in citing Bone is unsound, therefore, the rejection is improper for this additional reason.

4. The alleged motivation to combine Bone with Duggan lacks merit.

The Office asserts that the motivations to combine the teachings of Bone with those of Duggan are two-fold, i.e., "to create a three-tier system which increases the efficiency of managing the storage resources by load-balancing the processes of data collection and management and also in order to increase the efficiency of the collection process by allowing devices with different protocols to communicate with one another" (Office action, page 4). Applicants respectfully disagree.

As to the alleged motivation to create a three-tier system, note that a three-tier system as disclosed in Bone results from placing an intermediate device (e.g., intermediate device 815) *in the request/response path between a client and server*. It is not apparent how placing the data collection agent 115 of Duggan (or any other data collection agent) in the request/response path between a client and server would have any benefit in the system of Duggan; in fact, that would likely render the system inoperable for its intended purpose. On the other hand, to place some other type of "agent" (i.e., other than data collection agent) in the request/response path would not be relevant to Applicant's claims.

Applicants also dispute the Office's contention that adding an additional tier to the system of Duggan would enable "load-balancing of the processes of data collection and management", as the Office contends; it is not apparent how adding an additional tier to the system of Duggan would enable "load-balancing" of those processes.

The second alleged motivation, i.e., "to allow devices with different protocols to communicate with one another", also is not pertinent. The Office has not provided any credible reason why there would be a need or benefit in the system of Duggan for an agent that enables communication between devices that use different protocols; the Office merely states that this would "increase the efficiency of the collection process". Applicants respectfully dispute that contention and request that the Office explain how the ability to have devices with different protocols communicate with each other would "increase the efficiency" of the data collection process in the system of in Duggan.

In view of these considerations, Applicants respectfully submit that there would be no reason for someone of ordinary skill the art to try to combine the teachings of Bone with those of Duggan. For this additional reason, therefore, the cited combination of references does not render Applicants' independent claims obvious.

For at least the above reasons, independent claims 10 and 34 and all claims which depend on them are thought to be patentable over the cited art.

New claim 42

The above arguments regarding claims 10 and 34 also apply to claim 42. In addition, the cited references also do not disclose or suggest, either individually or in combination, any of the following operations recited in claim 42:



determining, by the agent, a number of child nodes in the directory in the storage server and incrementing a reference count by the number;

the summary includes a histogram;

decrementing the reference count after scanning the child node.

Nor do the cited references disclose or suggest an *iterative* process such as recited in claim 42, i.e., where certain steps are repeated until said reference count equals a predetermined value.

Further, the cited references do not disclose or suggest that combining the collected information into a summary of the directory occurs *concurrently with the scanning operation* for different items of information.

For at least these additional reasons, therefore, claim 42 and all claims which depend on it are thought to be patentable with the cited art.

#### New claim 47

The above arguments regarding claims 10 and 34 also apply to claim 47. Further, the cited references do not disclose or suggest, either individually or in combination, scanning *each of the child nodes in a directory* in a storage server to collect information about the child nodes, nor do the references disclose or suggest combining the collected information about the child nodes into a summary of the directory wherein said combining occurs *concurrently with said scanning*, for different items of information.

For at least these additional reasons, therefore, claim 47 and all claims which depend on it are thought to be patentable with the cited art.

Applicants have not necessarily discussed here every reason why every pending independent claim is patentable over the cited art; nonetheless, Applicants are not waiving any argument regarding any such reason or reasons. Applicants reserve the right to raise any such additional argument(s) during the future prosecution of this application, if Applicants deem it necessary or appropriate to do so.

#### Dependent Claims

In view of the above remarks, a specific discussion of the dependent claims is considered to be unnecessary. Therefore, Applicants' silence regarding any dependent claim is not to be interpreted as agreement with, or acquiescence to, the rejection of such claim or as waiving any argument regarding that claim.

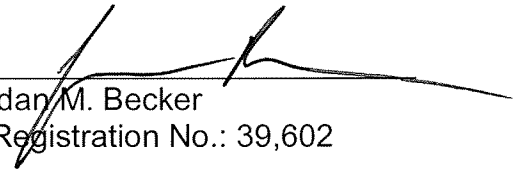
Conclusion

For the foregoing reasons, the present application is believed to be in condition for allowance, and such action is earnestly requested.

Please charge Deposit Account No. 50-2207 for any fees due in this matter.

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Respectfully submitted,

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